

**REMARKS/AGRUMENTS**

Reconsideration of this application as amended is respectfully requested.

The Examiner has rejected claims 3-4, 7-10, 13-16, 21-24 and 27 under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The Examiner has rejected claims 1-4, 7-10, 13-16, 21-24 and 27 under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,402,416 to Cielsak, et al. (hereafter "Cielsak").

The Examiner has rejected claims 5-6, 11-12, 17-18, and 25-26 under 35 U.S.C. §103(a) as being unpatentable over Cielsak in view of the alleged prior art.

Claims 1, 3, 4, 7, 9, 10, 13, 15, 16, 21, 23, 24, and 27 have been amended.

Claims 14 and 22 have been cancelled.

**CLAIM REJECTIONS – 35 USC §112**

The Examiner has rejected claims 3-4, 7-10, 13-16, 21-24 and 27 under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claims 1, 3, 4, 7, 9, 10, 13, 15, 16, 21, 23, 24, and 27 have been amended, and applicants respectfully submit that the Examiner's rejections have been overcome.

**CLAIM REJECTIONS – 35 USC §102 (b)**

The Examiner has rejected claims 1-4, 7-10, 13-16, 21-24 and 27 under 35 U.S.C. § 102(b) as being anticipated by Cielsak. Applicants submit that claims 1-29 are not anticipated by Cielsak. In regard to the rejection of claim 1, the Examiner has stated in part that:

Cielsak discloses a network interface comprising: a memory to store statistics for a connection; a counter, to count statistic stored in the memory (counting switch stabilizing message, Col. 9, lines 29-53).....

(12/30/04, Office Action, pp. 3-4)

Applicants respectfully submit that, claim 1 is not anticipated by Cielsak. The Federal Circuit has held that *a claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, (Fed. Cir. 1987). *The identical invention must be shown in as complete detail as is contained in the ... claim. Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, (Fed. Cir. 1989). Claim 1 recites the features of *counting statistics for a plurality of connections, wherein the statistics include a number of cells per virtual channel and a number of cells having a loss priority bit*. (Emphasis added) Cielsak does not disclose these features as can be seen by the following analysis of Cielsak.

Cieslek describes a method and system for buffer occupancy reduction in packet switch network. (Cieslek, title) In particular, Cieslak addresses buffer back-up in isochronous data transfer when a destination node is unavailable. The Cieslak system creates various states of nodes (e.g., init, feedback, stabilizing, stable and disconnected) to provide messaging between nodes to anticipate buffer back-up. (Cieslak, col. 8, ll. 18-33) In particular reference to the "stabilizing" state, Cieslak provides for counters that determine if a threshold level of stabilizing messages have been received from a destination node to change states. (Cieslak, col. 9, ll. 30-35)

The stabilizing messages of Cieslak are not statistics that include *a number of cells per virtual channel and a number of cells having a loss priority bit* as claimed by applicants.

Because Cielsak does not disclose this feature as taught by claim 1, and given that claims 2-6 depend from claim 1, applicants respectfully submit that claims 1-6 are not anticipated under 35 U.S.C. §102(b) by Cielsak.

The Examiner also rejected independent claim 7 under 35 U.S.C. §102(b) for the reason set forth in the rejection of claim 1. Claim 7 discloses substantially similar limitations as claim 1,

and recites *wherein the statistics include a number of cells per connection and a number of cells having a loss priority bit.* (Emphasis added) Because, Cielsak does not disclose these features as taught by applicants for the reasons discussed above with regard to claim 1, and given that claims 8-12 depend from claim 7, applicant respectfully submits that claims 7-12 are not anticipated under 35 U.S.C. §102(b).

The Examiner also rejected independent claim 13 under 35 U.S.C. §102(b) for the reason set forth in the rejection of claim 1. Claim 13 discloses substantially similar limitations as claim 1, and recites *wherein the statistics include a number of cells per connection and a number of cells having a loss priority bit.* (Emphasis added) Because, Cielsak does not disclose these features as taught by applicants for the reasons discussed above with regard to claim 1, and given that claims 14-20 depend from claim 13, applicant respectfully submits that claims 13-20 are not anticipated under 35 U.S.C. §102(b).

The Examiner also rejected independent claim 21 under 35 U.S.C. §102(b) for the reason set forth in the rejection of claim 1. Claim 21 discloses substantially similar limitations as claim 1, and recites *wherein the statistics include a number of cells per connection and a number of cells having a loss priority bit.* (Emphasis added) Because, Cielsak does not disclose these features as taught by applicants for the reasons discussed above with regard to claim 1, and given that claims 22-26 depend from claim 21, applicant respectfully submits that claims 21-26 are not anticipated under 35 U.S.C. §102(b).

The Examiner also rejected independent claim 27 under 35 U.S.C. §102(b) for the reason set forth in the rejection of claim 1. Claim 27 discloses substantially similar limitations as claim 1, and recites *wherein the statistics include a number of cells per connection and a number of cells having a loss priority bit.* (Emphasis added) Because, Cielsak does not disclose these features as taught by applicants for the reasons discussed above with regard to claim 1, and given that claims 28-29 depend from claim 27, applicant respectfully submits that claims 27-29 are not anticipated under 35 U.S.C. §102(b).

**CLAIM REJECTIONS – 35 USC §103 (a)**

The Examiner has rejected claims 5-6, 11-12, 17-18, and 25-26 under 35 U.S.C. §103(a) as being unpatentable over Cielsak in view of the alleged prior art. In regard to the rejection of claim 5 under 35 U.S.C. §103(a), the Examiner has stated in part that:

Thus, it would have been obvious for one of ordinary skill in the art at the time of the invention was made to used the FIFO for storing connection Identification, with the motivation of Queuing stable ports for selectively connections

(12/30/03 Office Action, p. 5).

Applicant submits that claims 1-29 are not obvious in view of Cielsak and the alleged prior art. It is respectfully submitted that it would be impermissible hindsight, based on applicant's own disclosure, to combine Cielsak and the alleged prior art.

Obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. *In re Fine*, 837 F.2d 1071 (Fed. Cir. 1988).

In regard to the rejection of claim 5, even if Cielsak and the alleged prior art were combined, such a combination would lack one or more features of claim 1 from which claim 5 depends. Claim 1 recites the feature of ***wherein the statistics include a number of cells per connection and a number of cells having a loss priority bit.*** (Emphasis added) This feature is not disclosed by Cielsak for the reasons described above in regard to the rejection of claim 1. Nor does the alleged knowledge in the art disclose this feature.

Thus, because neither, Cielsak nor the alleged prior art disclose applicants' claim 1, applicants respectfully submit that claim 1 is not obvious under 35 U.S.C. §103(a) by Cielsak in view of the alleged prior art. Given that claims 2-6 depend from claim 1, applicants respectfully submit that claims 1-6 are not obvious under 35 U.S.C. §103(a).

The Examiner also rejected claim 7 under 35 U.S.C. §103(a) for the reasons set forth in the rejection of claim 1. Claim 7 discloses substantially similar limitations as claim 1 and recites *wherein the statistics include a number of cells per connection and a number of cells having a loss priority bit*. Because Cielsak, in view of the alleged prior art, does not disclose this feature and given that claims 8-12 depend from claim 7, applicants respectfully submit that claims 7-12 are not obvious under 35 U.S.C. §103(a) by Cielsak, in view of the alleged prior art.

The Examiner also rejected claim 13 under 35 U.S.C. §103(a) for the reasons set forth in the rejection of claim 1. Claim 13 discloses substantially similar limitations as claim 1 and recites *wherein the statistics include a number of cells per connection and a number of cells having a loss priority bit*. Because Cielsak, in view of the alleged prior art, does not disclose this feature and given that claims 14-20 depend from claim 13, applicants respectfully submit that claims 13-20 are not obvious under 35 U.S.C. §103(a) by Cielsak, in view of the alleged prior art.

The Examiner also rejected claim 21 under 35 U.S.C. §103(a) for the reasons set forth in the rejection of claim 1. Claim 21 discloses substantially similar limitations as claim 1 and recites *wherein the statistics include a number of cells per connection and a number of cells having a loss priority bit*. Because Cielsak, in view of the alleged prior art, does not disclose this feature and given that claims 22-26 depend from claim 21, applicant respectfully submits that claims 21-26 are not obvious under 35 U.S.C. §103(a) by Cielsak, in view of the alleged prior art.

The Examiner also rejected claim 27 under 35 U.S.C. §103(a) for the reasons set forth in the rejection of claim 1. Claim 27 discloses substantially similar limitations as claim 1 and recites *wherein the statistics include a number of cells per connection and a number of cells having a loss priority bit*. Because Cielsak, in view of the alleged prior art, does not disclose this

feature and given that claims 28-29 depend from claim 27, applicant respectfully submits that claims 27-29 are not obvious under 35 U.S.C. §103(a) by Cielsak, in view of the alleged prior art.

**CONCLUSION**

In view of the foregoing, it is believed that all claims now pending (1) are in proper form, (2) are neither obvious nor anticipated by the relied upon art of record, and (3) are in condition for allowance. A Notice of Allowance is earnestly solicited at the earliest possible date. If the Examiner believes that a telephone conference would be useful in moving the application forward to allowance, the Examiner is encouraged to contact the undersigned at (408) 947-8200.

Respectfully submitted,

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